

defendants in this case is that there had to be some declaration or some unequivocal act equivalent to a declaration on the part of the owners to the hirer in order to terminate the hiring. Actual retaking of possession has been held to be such a declaration. In this connection it is to be observed that the plaintiffs' employees retook possession of the tractor after showing to a partner of the defendant company a letter addressed to them by the plaintiffs that such repossession was being taken in consequence of their failure to make payment. This partner of the defendant company in fact took the plaintiffs' employees into the jungle and there gave possession of the tractor. Thus there was a clear indication by the plaintiffs of their intention to treat the agreement as terminated, and this intention was in fact conveyed to the defendants. If any written notice was required under the agreement at all it was under clause 4(b) of the agreement which was absolutely to determine and end the agreement for all purposes. This notice was in fact given by the plaintiffs by their letter dated 3rd February, 1964. In the circumstances I hold that the plaintiffs are entitled to succeed on their claim and that the defendants' counterclaim must fail.

There is no dispute about the plaintiffs' claim in respect of arrears of hire-rent and the cost of removal of the tractor. As regards their claim for a sum of \$10,381.43 by way of depreciation under clause 6(b) of the agreement, they have produced evidence to show that the amount spent on overhauling the tractor was \$5,480.05 and the amount spent on spares was \$10,528.44 which apparently included the cost of a second-hand engine at \$7,257.90 inclusive of approximately \$900 as profits. It has been admitted that the margin of profit on spares amounted to 50% and that an approximate profit of \$1,300 was included in the labour charges amounting to \$4,058. Nonetheless the cost of overhaul and repairs to the tractor exclusive of the profits would still be in the region of \$10,000. This, however, does not take into account the old engine of the tractor which presumably was not a complete loss. I would therefore allow a sum of \$7,000 by way of depreciation under clause 6(b) of the agreement which will be added to the sum of \$10,843.43 as the amount due and payable on the date of termination of the agreement and \$500 as cost of removal of the tractor. There will be judgment for the plaintiffs in the sum of \$18,343.43 and the defendants' counterclaim is dismissed. The defendants will pay the costs of the action.

Judgment for the plaintiffs.

Solicitors: *Lovelace & Hastings; Chooi & Co.*

PUBLIC PROSECUTOR v. LEE SENG SEH

[A.Cr.J. (Raja Azlan Shah J.) February 5 1966]

[K.L. — Criminal Appeal No. 77 of 1965]

Criminal Law and Procedure — Sentence — Adequacy of — Failure to furnish income tax returns — Income Tax Ordinance, 1947, s. 59(1).

Income Tax — Returns — Failure to furnish — Sentence.

The accused was convicted of three offences of failing to furnish returns of income tax and sentenced to \$25 on each charge. The Deputy Public Prosecutor appealed against the sentences imposed.

Held: (1) income tax offences are of a very grave character and the learned magistrate in this case should have considered not only the interest of the accused but also the interest of the public;

(2) the sentences were inadequate and should be increased to a fine of \$150 on each charge.

Cases referred to:—

(1) *Ambard v. Attorney-General for Trinidad* [1936] A.C. 322 at p. 336.

(2) *Jamieson v. Jamieson* [1952] A.C. 525 at p. 549.

(3) *Public Prosecutor v. Choo Swee Huat* [1963] M.L.J. 28.

CRIMINAL APPEAL.

Wan Hamzah (Deputy Public Prosecutor) for appellant.

R. Talalla for respondent.

Raja Azlan Shah J.: The respondent was charged with three offences under section 59(1) of the Income Tax Ordinance, to wit, he had failed to furnish within 21 days returns of income for the years 1963, 1964 and 1965. He was unrepresented in the court below and pleaded guilty to each of these charges. He was fined a sum of \$25 on each charge. Against that decision the learned Deputy Public Prosecutor has now appealed. There are four grounds of appeal, and to my mind they can all be taken together.

In exercising its jurisdiction to review sentence an appellate court does not alter a sentence on the mere ground that if it had been trying the case it might have passed a somewhat different sentence. As was said by Lord Atkin in *Ambard v. Attorney-General for Trinidad*:⁽¹⁾ "Sentences do vary in apparently similar circumstances with the habit of mind of the particular judge." Again, in *Jamieson v. Jamieson*,⁽²⁾ Lord Reid said that "human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions". It is only when a sentence appears to be wrong in law or is manifestly excessive or inadequate having regard to the facts and circumstances that an appellate court will interfere.

In the present case the learned magistrate viewed with concern the respondent's present

difficulties and predicaments. The respondent in mitigation had submitted that his father had died intestate and that his application for letters of administration was still in the hands of his solicitors. But, as was pointed out by the learned Deputy Public Prosecutor, the offence was in respect of his own private income and not that of his father's estate. Any way, that was the view of the matter which commended itself to the learned magistrate and encouraged him to impose a sentence of \$25 on each of the three charges. To my mind, income tax offences are of a very grave character and I share the view of my learned brother Suffian J. in the case of *Public Prosecutor v. Choo Swee Huat*.⁽³⁾

It was submitted by counsel for the respondent that the offences under which the accused was charged in *Public Prosecutor v. Choo Swee Huat* and the offences under the present case are somewhat dissimilar, the former being failure to give notice of chargeability and the present case being failure to furnish returns within a stipulated time. Be that as it may, I am nevertheless satisfied that they are income tax offences under the same section 59 of the Income Tax Ordinance. It was again submitted by learned counsel that the charge was bad in law and that I should revise it under my revisionary powers. For my part I am satisfied that the charge is good in law and that the contention of counsel has no foundation.

In the circumstances one would have expected the learned magistrate to give the most earnest attention to the interests, not only of the respondent, but also of the public. He had failed to consider the foremost consideration of them all, viz. the element of public interest. It is too often nowadays thought, or seems to be thought, that the interest of the prisoner is the only consideration. Not enough consideration is given to the interest of the public.

With regard to sentence in income tax cases and, if I may be permitted to include cases under the Employees Provident Fund Ordinance, it is unfortunately true that until recently, possibly even at the present day as this case would suggest, there is a tendency for magistrates to impose "pin-prick" sentences which to my mind do not appear to the world at large as a deterrent. The tragic consequence would be that the efficacy of punishment as a system of general deterrence is impaired. I trust that in future cases of this nature magistrates will see fit to take a more serious view of the situation.

To my mind, the fine of \$25 on each charge is manifestly inadequate and I shall impose a fine of \$150 on each charge. Since the respondent has already paid \$25, he has to pay a further \$125 on each charge. I therefore allow

A the appeal.

Appeal allowed.

Solicitors: *Richard Talalla & Menon.*

B ANGLO-AMERICAN CORPORATION LTD. v. CHIN PAK SOON & ANOR.

[O.C.J. (Raja Azlan Shah J.) February 5, 1966]

[K.L. — Civil Suit No. 555 of 1964]

C *Hire-purchase agreement — Judgment in default against hirer and guarantor — Judgment against guarantor set aside — Interim judgment against guarantor — Estoppel — Right of guarantor to seek indemnity from principal debtor — Contracts (Malay States) Ordinance, 1950, s. 98 — R.S.C. 1957 O. 54 r. 22A.*

Practice and Procedure — Judgment set aside — Interim judgment — Estoppel.

D This was a claim on a hire-purchase agreement relating to a tractor. The plaintiffs had obtained judgment in default of appearance against the hirer and the guarantor. Subsequently the second defendant (the guarantor) applied for the judgment to be set aside and an order was accordingly made. The plaintiff thereupon asked for interim judgment to be entered against the second defendant and this was granted. The second defendant applied for this interim judgment to be set aside under R.S.C. 1957, O. 54 r. 22A.

E Held: (1) as the judgment against the defendants had been set aside the plaintiff was not estopped from making the application for interim judgment;

(2) in law the second defendant was entitled to be indemnified by the principal debtor and therefore in the circumstances of this case the interim judgment should be set aside.

Cases referred to:—

- F (1) *Kok Hoong v. Leong Cheong Kweng Mines Ltd.* [1964] M.L.J. 49, P.C.
(2) *Watt v. Mortlock* [1963] 1 All E.R. 388.
(3) *Bechervaise v. Lewis* (1872), L.R. 7 C.P. 372 at p. 377.

CIVIL SUIT.

G A. D. Rajah for the plaintiffs.

K. A. Menon for the defendants.

Cur. Adv. Vult.

H Raja Azlan Shah J.: This claim is one typical of a great many actions which now are being brought and which in recent times have been brought on hire-purchase agreements. The particular hire-purchase relates to the hiring of a tractor by the plaintiffs as owners to the first defendant as hirer and the second defendant as guarantor.

I The statement of claim which is specially endorsed, *inter alia*, states:

"2. The second defendant in consideration of the plaintiffs having at his request agreed to hire to the first defendant the said tractor undertook and guaranteed the payments of the said rents and all other sums of money which may become payable by the first defendant under the terms of the said agreement and undertook to indemnify the plaintiffs against all loss, damage or expense which the plaintiffs may sustain by reason of the